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1 - Watchdogs Warned of Chemical-Plant Oversight Before Blast

Bloomberg, 04/24/2013

<http://www.bloomberg.com/news/2013-04-24/watchdogs-warned-of-chemical-plant-oversight-before-blast.html>

In the months before last week's deadly fertilizer plant explosion in Texas, U.S. government watchdogs criticized federal oversight of facilities that make or store dangerous chemicals. Agencies from the Department of Homeland Security to the Chemical Safety Board were faulted for taking too long to act or failing to persuade regulators to impose stricter safety rules.

2 - Range Resources can seek defamation case against Parker County landowner, court says

Ft. Worth Star Telegram, 04/23/2013

<http://www.star-telegram.com/2013/04/23/4798228/range-resources-can-seek-defamation.html>

Range Resources Corp. won a Texas appeals court's permission to pursue defamation and business disparagement claims against a Parker County landowner who accused the company of fouling his water well. In a ruling Tuesday, the 2nd Court of Appeals in Fort Worth let stand two of Range's claims against Steven Lipsky, who sued the company in June 2011 and was countersued a month later.

3 - Fracking disclosure site has 'serious deficiencies,' study says

Dallas Morning News, 04/23/2013

<http://www.dallasnews.com/business/energy/20130423-fracking-disclosure-site-has-serious-deficiencies-study-says.ece>

A government-mandated website on which oil and gas companies list chemicals they pump into the ground at hydraulic fracturing sites has "serious deficiencies," according to a study by Harvard Law School released Tuesday. The study found FracFocus.org lacked transparency and gave companies "overly broad" authority to determine what they can exclude in the name of trade secrets. The report also asserted there was little to no oversight by the website or the 11 states that require companies to file disclosures there.

4 - How Will Texas Explosion Impact Chemical Security Laws?

The National Journal, 04/23/2013

<http://www.nationaljournal.com/nationalsecurity/how-will-texas-explosion-impact-chemical-security-laws-20130423>

The fertilizer plant explosion that leveled homes and killed at least 14 people last week in West, Texas, demonstrates the need for tougher chemical security laws, some Democrats say. Whether such proposals will have any legs on Capitol Hill remains uncertain.

5 - ADEQ continuing to monitor Lake Conway

THV 11, 04/23/2013

<http://www.thv11.com/news/article/261745/2/ADEQ-continuing-to-monitor-Lake-Conway>

The Arkansas Department of Environmental Quality continues to monitor water quality in and around Lake Conway to track any potential environmental impact from an oil spill that started in Mayflower on March 29. Since early April, ADEQ has taken samples twice a week at a number of locations in the cove and main body of the lake. In all, 20 sites are currently being sampled by the Department. The sites were chosen with the input of ADEQ scientists as well as those at other state agencies, such as the Arkansas Game and Fish Commission.

6 - Two local plants on list of repeated breakdowns, pollution

The Port Arthur News, 04/24/2013

<http://panews.com/local/x1097433558/Two-local-plants-on-list-of-repeated-breakdowns-pollution>

A number of environmental groups are banding together in their bid for an investigation of federal and Texas regulators' response to repeated breakdowns at the facilities. The Environmental Integrity Project and nine community and public interest organizations, including Community In Power and Development Association in Port Arthur, sent a letter to the USEPA Inspector General regarding the claims.

7 - EPA on Keystone XL: Significant Climate Impacts from Tar Sands Pipeline

Yahoo News, 04/24/2013

<http://news.yahoo.com/epa-keystone-xl-significant-climate-impacts-tar-sands-001100447.html>

In a draft assessment of the proposed Keystone XL pipeline, consultants for the U.S. State Department judged that building it would have no significant impact on greenhouse gas emissions. Why? Because the analysts assumed the tar sands oil would find a way out with or without the new pipeline. The U.S. Environmental Protection Agency does not agree. Keystone XL's ability to carry an additional 830,000 barrels of tar sands oil per day is vital to expanded production of the tarry crude in Alberta

8 - Small sequester cuts in EPA grant program mean big headache for state regulators

Greenwire, 04/24/2013

<http://www.eenews.net/Greenwire/2013/04/24/1>

At a glance, U.S. EPA's plan to cut an \$11.5 million grant program in an effort to meet the sequestration mandate doesn't look like much given the agency's \$8.5 billion budget. But that's a lot of money to state and local air regulators who have been counting on it.

9 - NM issues \$838K civil penalty in emissions case

Carlsbad Current Argus, 04/24/2013

http://www.currentargus.com/ci_23092432/nm-issues-838k-civil-penalty-emissions-case

A natural gas processing company will have to pay a civil penalty of more than \$838,000 as part of a settlement with the New Mexico Environment Department. The department announced Tuesday that it has entered into a settlement agreement with Enterprise Products Operating LLC over numerous alleged emissions violations at 31 different sites operated by the company and its subsidiaries.

10 - Many Americans Breathing Cleaner Air: Report

U.S. News and World Report, 04/24/2013

<http://health.usnews.com/health-news/news/articles/2013/04/24/many-americans-breathing-cleaner-air-report>

Although many Americans are now breathing cleaner air, others are living in cities that are more polluted than they were a decade ago, a new report shows. "The long-term trend is positive and headed to much cleaner air," said report author Janice Nolen, assistant vice president of national policy and advocacy for the American Lung Association.

11 - Texas Southern University, EPA form partnership

Ultimate Bellaire, 04/21/2013

<http://ultimatebellaire.com/stories/501806-texas-southern-university-epa-form-partnership>

Texas Southern University has signed a partnership Memorandum of Understanding with the Environmental Protection Agency. "Texas Southern University has entered into a significant agreement with the Environmental Protection Agency Region 6 that will help train qualified professionals in environmental policy, economics and several areas of science, business and technology. The Memorandum of Understanding will focus on bringing innovative strategies to the forefront to assure an adequate supply of highly trained and skilled personnel for the accomplishment of environmental research, policy and program development," according to a press release from Texas Southern University.

12 - Texas buildings, from San Antonio to Fort Hood, recognized by EPA for energy savings

Houston Chronicle, 04/23/2013

<http://blog.chron.com/txpotomac/2013/04/texas-buildings-from-san-antonio-to-fort-hood-recognized-by-epa-for-energy-savings/>

Yesterday, the Environmental Protection Agency announced the winners of its third-annual "battle of the buildings" Energy Star National Building Competition. 3,000 institutions from around the country competed to see which could reduce its energy use the most in a year, and several Texans came out on top. The winner of the competition was an elementary school from New Jersey, cutting its cost by 52 percent. Following close behind in second place was the AAFES Fort Hood Warrior Way Express Store, which cut its energy cost by 48.5 percent, saving over \$17,000 in energy costs.

13 - States Detail Competing Priorities For Next EPA Emissions Transport Plan

Inside EPA, 04/23/2013

<http://insideepa.com/201304242432001/EPA-Daily-News/Daily-News/states-detail-competing-priorities-for-next-epa-emissions-transport-plan/menu-id-95.html>

States are outlining competing priorities at meetings with EPA on policies for curbing interstate transport of air pollution, with eastern states seeking strict controls on industrial plants in upwind states while officials in other states are pushing options that could reduce their burdens under a future agency air transport plan.

14 - EPA Inspector General Launching Investigation Into Stalled NPL Listings

Inside EPA, 04/23/2013

<http://insideepa.com/201304232431830/EPA-Daily-News/Daily-News/epa-inspector-general-launching-investigation-into-stalled-npl-listings/menu-id-95.html>

EPA's Office of Inspector General (IG) is initiating a study to uncover why EPA has a backlog of sites that have been proposed to be added to Superfund's National Priorities List (NPL), the list of the worst contaminated sites in the country, but have never moved forward.



Watchdogs Warned of Chemical-Plant Oversight Before Blast

By Mark Drajem - Apr 24, 2013

In the months before last week's deadly fertilizer plant explosion in [Texas](#), U.S. government watchdogs criticized federal oversight of facilities that make or store dangerous chemicals.

Agencies from the Department of [Homeland Security](#) to the Chemical Safety Board were faulted for taking too long to act or failing to persuade regulators to impose stricter safety rules.

The deficiencies are gaining fresh scrutiny after the April 17 explosion at the Adair Grain Inc. fertilizer facility in West, Texas, killed 14 people. State and federal investigators are seeking the cause of the blast, in which 10 firefighters and emergency personnel were among the fatalities.

"The fact that a community and a nation lost 14 people in an explosion that leveled buildings so close to this plant tells us something went very wrong," Representative Paul Tonko of New York, top Democrat on the House Energy and Commerce's subcommittee on environment and economy, said in an e-mail. "Clearly the state and federal government should have been doing much more to prevent an accident of this magnitude."

The U.S. has about 90 facilities -- including chemical factories, refineries, water treatment plants or fertilizer depots -- that in a worst-case scenario would pose risks to more than a million people, according to a [Congressional Research Service](#) report in November that analyzed reports submitted by companies to the EPA.

Regulatory Failings

About 400 other facilities could pose risks to more than 100,000 people, according to the report. The calculations were based on the proximity of each plant to a population center as well as a "worst-case release scenario" -- such as an explosion or leak -- that facility owners are required to report to the EPA.

Federal watchdogs in reports and testimony laid out a series of agency failings: The Department of Homeland Security, which aims to protect chemical plants from terrorist attack, may take [more than seven years](#) to review security plans of 3,120 facilities; the Environmental Protection Agency's

inspectors of chemical facilities [lacked proper training](#); and the U.S. Chemical Safety Board failed to get many [safety recommendations](#) implemented, with 25 percent languishing for five years or more.

Tonko's panel held an [oversight hearing](#) on Homeland Security's Chemical Facility Anti-Terrorism Standards program, or CFATS, on March 14 at which the Congressional Research Service released a report showing gaps in anti-terrorism efforts. There is no indication the West explosion is related to terrorism.

'Painful Process'

"Sadly, it has been a very painful process to see how badly CFATS had fallen short of our expectations and to see the struggle, both inside DHS as well as externally, to get the program back on track," Representative [John Shimkus](#), an Illinois Republican and committee chairman, said in a statement then. "In key areas the suggested progress is not what we had hoped."

The EPA doesn't collect information about ammonium nitrate, the chemical stored at the Texas plant. The West, Texas, facility was approved by state regulators to store 270 tons of ammonium nitrate, according to records. Adair didn't tell U.S. agencies how much ammonium nitrate was on site.

The highly explosive chemical is responsible for some of the deadliest industrial accidents and terrorist attacks. Timothy McVeigh used it in 1995 to destroy [Oklahoma City](#)'s Alfred P. Murrah Federal Building, killing 168 people. The [Irish Republican Army](#) used it to attack [London](#)'s Canary Wharf in 1996.

Adair Pledge

Daniel Keeney, a spokesman for Adair, declined to comment. Donald Adair, the company's owner, in a statement issued April 19, said, "We pledge to do everything we can to understand what happened to ensure nothing like this ever happens again in any community."

About 70 investigators including engineers and chemists from state and federal agencies are poring over the scene. They've interviewed 60 to 70 witnesses, including passers-by and emergency crews.

Since a chemical leak in Bhopal, [India](#), in 1984 that killed about 3,800 people, environmental groups, unions and safety groups have pushed the U.S. to tighten oversight of chemical production and storage facilities. While they pressed for the proposals after the 2001 terrorist attacks in [New York](#), legislation never passed in Congress.

Patchwork Programs

Instead, a patchwork of programs operates under separate departments, each with its own objectives,

congressional oversight and constraints.

The Department of Homeland Security's chemical security program drew increased congressional scrutiny after an internal memo detailing problems with the program surfaced in 2011, according to Stephen Caldwell, a director who oversees the agency for the Government Accountability Office. At the current pace, it could take years to review all the plans and conduct needed inspections, Caldwell said at the March congressional hearing, according to his written testimony.

DHS has already sped up reviews and "recognizes the need to increase the pace of authorization and approvals and is examining potential approaches for increasing the pace," Rand Beers, undersecretary of Homeland Security, [testified](#) at the hearing.

For the EPA, its inspector general found many inspectors and supervisors lack minimum training requirements.

"As noted in the IG report, EPA started addressing program improvement several years ago beginning in 2010 and continuing to the present with steps to make changes to better our" chemical inspection program, Alisha Johnson, an EPA spokeswoman, said in an e-mail.

Safety Board

The Chemical Safety Board, a five-member investigating body that lacks the power to impose rules, "did not consistently achieve its goals and standards, as outlined in its current strategic plan, for timely implementation of its safety recommendations," its inspector general said in an August review. In a [letter](#) of response, Chairman Rafael Moure-Eraso said the independent agency is adopting measures to better advocate for adoption of its recommendations by industry, labor unions and government agencies.

Safety advocates say deficiencies uncovered at the departments show the need for legislation to tighten rules.

"You have to reduce the consequence of an attack on your facility," Rick Hind, legislative director for Greenpeace, said in an interview. "If you can't prevent an accident, prevent the catastrophic consequence of an accident."

Measures previously considered would have forced companies to abandon the most-dangerous chemicals, or prodded them into using less of those chemicals and adopting safeguards to ensure that they couldn't cause a catastrophe.

"What will be important is the investigation" in West, Scott Jensen, a spokesman for the American Chemistry Council, which represents companies such as 3M Co. and [BP Plc. \(BP/\)](#), said in an

interview. “It’s early to figure out what steps need to be taken. We need to be sure the legislation in place is being implemented properly.”

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Star-Telegram

Range Resources can seek defamation case against Parker County landowner, court says

Posted Tuesday, Apr. 23, 2013

BY TOM KOROSEC

Bloomberg News

Range Resources Corp. won a Texas appeals court's permission to pursue defamation and business disparagement claims against a Parker County landowner who accused the company of fouling his water well.

In a ruling Tuesday, the 2nd Court of Appeals in Fort Worth let stand two of Range's claims against Steven Lipsky, who sued the company in June 2011 and was countersued a month later.

The appeals panel also ordered the Weatherford trial court to dismiss all of Range's claims against Lipsky's wife, Shyla, and Alisa Rich, an environmental consultant for the Lipskys.

It also set aside Range's claims against Steven Lipsky of aiding and abetting and civil conspiracy.

Lipsky's suit came after the Environmental Protection Agency issued an administrative order in December 2010 saying the gas producer was responsible for contaminating Lipsky's water with dangerous levels of methane and benzene, which can cause cancer.

The EPA withdrew its order in 2012 after Range challenged its findings and the Texas Railroad Commission found that the gas in Lipsky's well was most likely from a different source.

Range had alleged that the Lipskys and Rich conspired to persuade the EPA to intervene. Brent Rosenthal, a lawyer for the Lipskys, declined to comment on the ruling.

Matt Pitzarella, a Range spokesman, said in an email that the company is pleased with the ruling that it has a "valid claim against Mr. Lipsky and we look forward to the opportunity to present our case in court."

The company is seeking \$3 million in damages.

Rich and the Lipskys had asked state District Judge Trey Loftin to throw out Range's countersuit because it violated a Texas law prohibiting so-called Strategic Lawsuits Against Public Participation, or SLAPPs. The law bans litigation meant to stifle public protest.

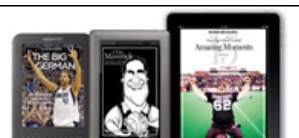
Loftin rejected that argument in February 2012. The case was appealed, and the appeals court ruled in August that it lacked jurisdiction to overturn the judge's ruling. The panel instead said it would hear a petition for an order blocking the lower court from enforcing the ruling.

"We conclude that the trial court did not clearly abuse its discretion by determining that Range had presented clear and specific evidence to establish a prima facie case for each essential element of its defamation and business disparagement claims against Steven Lipsky," the appeals court wrote.

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Fracking disclosure site has 'serious deficiencies,' study says



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By JAMES OSBORNE

Staff Writer

josborne@dallasnews.com

Published: 23 April 2013 08:42 PM

A government-mandated website on which oil and gas companies list chemicals they pump into the ground at hydraulic fracturing sites has "serious deficiencies," according to a study by Harvard Law School released Tuesday.

The study found FracFocus.org lacked transparency and gave companies "overly broad" authority to determine what they can exclude in the name of trade secrets. The report also asserted there was little to no oversight by the website or the 11 states that require companies to file disclosures there.

A review of the Texas wells listed on the site found that 29 percent of the chemical identification numbers reported did not represent actual chemicals.

"In many instances, states have written tough disclosure requirements," Kate Konschnik, policy director of the Harvard Environmental Law Program, said in a prepared statement. "However, when those same states direct companies to report on FracFocus, they give up a lot of oversight authority. Meanwhile, the public's ability to seek additional information or challenge trade secret claims is lost when an agency is not in possession of the disclosures."

Launched in 2011, FracFocus came in response to growing public concern about groundwater contamination from fracking. It is run by the Groundwater Protection Council, a nonprofit association of state water and oil and gas regulators, and the Interstate Oil and Gas Compact Commission, a coalition of governors from oil-producing states.

Stan Belieu, president of the groundwater council, criticized the Harvard study, saying that his group found at least two inaccuracies in the 15-page report.

"The FracFocus website was developed and is managed by the state oil and gas regulatory programs, and I am not aware of any state regulatory program that has been contacted by Harvard University," he said. "I do not understand how, without direct contact, this study can draw the conclusions it has."

Contacted Tuesday for comment, the Texas Railroad Commission, which oversees the oil and gas industry, did not directly address the study but stood by its policies.

"The Railroad Commission has in place a comprehensive regulatory framework over the oil and gas industry, which our agency has been effectively regulating for nearly 100 years, ensuring protection of Texas' environment while providing for efficient development of the state's oil and gas resources," a statement from the agency's spokeswoman said.

Follow James Osborne on

Twitter at [@osborneja](https://twitter.com/osborneja).

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Why didn't 2,400 tons of ammonium nitrate at West plant raise concerns?



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Wednesday, April 24, 2013

SEARCH

NationalJournal

How Will Texas Explosion Impact Chemical Security Laws?

by Douglas P. Guarino

Updated: April 23, 2013 | 4:32 p.m.

April 23, 2013 | 4:12 p.m.



Firefighters conduct a search and rescue of an apartment building destroyed by an explosion at a fertilizer plant in West, Texas. (AP Photo/LM Otero)

WASHINGTON -- The fertilizer plant explosion that leveled homes and killed at least 14 people last week in West, Texas, demonstrates the need for tougher chemical security laws, some Democrats say. Whether such proposals will have any legs on Capitol Hill remains uncertain.

Industry officials are already taking exception to calls for heightened regulations, and not all Democrats are convinced such rules are necessarily the appropriate solution. Many key lawmakers are holding out for more information while the cause of the blast remains under investigation.

Proponents of stricter rules have noted that the Homeland Security Department was not regulating the West Fertilizer site under its [Chemical Facility Antiterrorism Standards](#) program even though the facility held sufficient quantities of dangerous chemicals to trigger coverage.

This article was originally published in [Global Security Newswire](#), produced independently by National Journal Group under contract with the Nuclear Threat Initiative. NTI is a nonprofit, nonpartisan group working to reduce global threats from nuclear, biological, and chemical weapons.

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A risk management plan filed with the Environmental Protection Agency says the facility possessed up to 54,000 pounds of toxic anhydrous ammonia -- more than five times the CFATS threshold of 10,000 pounds. In addition, according to [Reuters](#), the plant last year reported to the Texas State Health Services Department that it possessed 270 tons of explosive ammonium nitrate -- more than 1,000 times the CFATS reporting threshold of 400 pounds.

“The fact that DHS was not regulating this plant calls into question the fundamentals of the program,” said Mississippi Representative Bennie Thompson, the top Democrat on the House Homeland Security Committee. Thompson indicated current law may need to be strengthened but has not discussed specifics.

Senator Frank Lautenberg (D-N.J.) suggested the April 17 disaster shows Congress needs to pass a pair of bills he introduced that would give the federal government the authority to require that high-risk facilities switch to safer technologies or materials when possible. Current law does not give DHS officials that power.

Whether Congress will act on those recommendations remains to be seen. Lautenberg has introduced his legislation repeatedly in recent years, but it has seen little action in the Senate Homeland Security and Environment committees. Any legislative bids by Thompson would most likely have to be approved by Republicans on the powerful House Energy and Commerce Committee, who have historically opposed tougher chemical security rules and who have delayed passing legislation to permanently authorize the CFATS program for years.

House Energy and Commerce Committee Republicans “want to fully obtain the facts of the situation first,” according to spokeswoman Charlotte Baker.

A spokeswoman for the Senate Homeland Security Committee, to which one of Lautenberg’s two bills has been referred, declined to comment on the legislation but said Chairman Thomas Carper (D-Del.) “will examine the impact of existing federal safety and security regulations on facilities like West Fertilizer and seek to identify whether additional steps should be taken to protect the public.”

The Senate panel will also “examine why the West facility was not registered with the Chemical Facility Antiterrorism Standards program, as it appears it should have been,” spokeswoman Jennie Westbrook said.

Staff for the Senate Environment and Public Works Committee, to which Lautenberg’s other bill has been referred, declined to comment.

One House Democratic aide suggested it might be premature to determine that requiring upgrades to safer technology is the appropriate way to address whatever problems might have caused the explosion. The aide, who asked to remain anonymous due to not being authorized to discuss the matter publicly, said it might be best

to first evaluate what could be done to ensure such facilities do not slip below the DHS radar in the future.

The CFATS program has already been the subject of controversy in recent years, since a leaked internal memo identified a litany of management problems and a failure by department personnel to complete reviews of facility security plans. Homeland Security officials have also yet to issue long-pending rules on screening chemical plant personnel for terrorist ties and on the handling of ammonium nitrate – the substance believed to have exploded in Texas.

Last year, House Republicans used the issues identified in the internal memo to justify a proposed 40 percent [funding cut](#) to the program. On Tuesday, a spokeswoman said House Appropriations Homeland Security Subcommittee Chairman John Carter (R-Texas) is “very concerned” about why the West plant did not enroll in the CFATS program.

“With that said, Chairman Carter is not going to make any further comment until more facts and information come out about the West explosion,” spokeswoman Sara Threadgill said.

A spokeswoman for Senate Appropriations Homeland Security Subcommittee Chairwoman Mary Landrieu (D-La.) declined to comment but said the issue would likely come up during a hearing on Tuesday afternoon.

Industry officials had strong words for those who have suggested the incident suggests a need for tougher chemical security laws.

“I’m appalled by some of these calls from members of Congress saying that ‘if only our terrorism standards were stronger these industrial accidents could be prevented,’” said Bill Almond, vice president of government relations for the Society of Chemical Manufacturers and Affiliates. “That’s absurd and it’s an inaccurate picture of how federal regulations are designed for the chemical industry.”

Almond argued the CFATS program was merely intended to add an antiterrorism component to existing chemical safety rules administered by other agencies, meaning the West incident is not necessarily indicative of failures of the DHS program. State and local zoning regulations could also be to blame, he suggested.

“I think at this point Congress should do nothing and it should wait until the [U.S.] Chemical Safety Board has had a chance to investigate and find out exactly what went wrong,” Almond told Global Security Newswire.

Scott Jensen, spokesman for the American Chemistry Council, added that upgrading chemical plants to so-called inherently safer technologies – as Lautenberg’s bills would mandate -- is often more complicated than it might seem. Such upgrades are not always as simple as swapping out one chemical for another, he said, adding

that often there “is good reason” why a particular substance is being used.

Like Almond, Jensen suggested Congress should wait until the Chemical Safety Board completes its ongoing investigation of the explosion before taking any action.

The Chemical Safety Board has already suggested, though, that mandates from state, local or federal regulators to switch to inherently safer technology could have prevented other recent accidents. Such a recommendation was delivered in a [report](#) the board released last week on a massive 2012 fire at a Chevron oil refinery in California.

Labor and environmental groups have argued that the Environmental Protection Agency has the authority to require such upgrades under the Clean Air Act, though it has never issued regulations utilizing that power. Agency rules mandate that facilities such as the West site submit risk management plans, “but those regulations are primarily procedural, requiring facilities to prepare and file planning documents with federal authorities; they do not impose substantive requirements to prevent chemical hazards through the use of safer technologies,” a coalition of labor and environmental groups argued in a petition to the agency last year.

The so-called blue-green coalition, which includes the United Steelworkers, Sierra Club and others, has leveled similar criticism of the DHS program.



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10:57 PM, Apr 23, 2013

From ADEQ:

The Arkansas Department of Environmental Quality continues to monitor water quality in and around Lake Conway to track any potential environmental impact from an oil spill that started in Mayflower on March 29.

Since early April, ADEQ has taken samples twice a week at a number of locations in the cove and main body of the lake. In all, 20 sites are currently being sampled by the Department. The sites were chosen with the input of ADEQ scientists as well as those at other state agencies, such as the Arkansas Game and Fish Commission.

"We realize the public has a lot of questions about the type of sampling being done in the area, and we want to make all information available," said ADEQ Director Teresa Marks. "We are providing all the data we have on our website and are willing to review credible data from independent parties should that data be made available to ADEQ. We are committed to ensuring this cleanup is properly completed."

As the state on-scene coordinator, ADEQ has closely reviewed the cleanup and remediation efforts.

Department employees are taking surface water samples at about a foot and a half. They are also taking deeper samples at various depths of between four and a half to five feet deep, depending on the lake depth at the given point.

Based on an analysis of all samples taken to date the department has no evidence upon which to conclude that oil from the spill has reached the main body of Lake Conway or Palarm Creek. In the cove of Lake Conway the Department continues to monitor water quality and the effects of the spill on the aquatic community.

Water quality data from ADEQ, EPA and ExxonMobil can be found on the Department's website www.adeq.state.ar.us. Air monitoring data from EPA and ExxonMobil is also on the site. The data, which is updated daily, and a map of the surface water sampling sites can be found on ADEQ's website by clicking the "Latest Data from Mayflower Oil Spill" in the Hot Topics section of the home page.

The response to the spill has been a coordinated effort between EPA, ADEQ, the Arkansas Department of Health, the Arkansas Game and Fish Commission, Faulkner County, the city of Mayflower, the responsible party (ExxonMobil) and many others.



April 24, 2013



Mayoral candidates speak

"I love my city, and when you love something, you want to see it grow, protect it, help it, nourish it," Mayor Deloris "Bobbie" Prince said. "And that is what I do for the city of Port Arthur."

Search

Two local plants on list of repeated breakdowns, pollution



Petrochemical facilities along Texas 82 in Port Arthur spew pollutants into the air on Sunday, April 14, after an Entergy power outage caused upsets in units. Roger Cowles

(<http://panews.com/local/x1097433558/Two-local-plants-on-list-of-repeated-breakdowns-pollution>)

Donia Caspersen Crouch

The Port Arthur News (<http://panews.com>)

A number of environmental groups are banding together in their bid for an investigation of federal and Texas regulators' response to repeated breakdowns at the facilities.

The Environmental Integrity Project and nine community and public interest organizations, including Community In Power and Development Association in Port Arthur, sent a letter to the USEPA Inspector General regarding the claims.

They purport that Valero Refinery in Port Arthur and the ExxonMobil Refinery in Beaumont are among the five Texas gas and petrochemical facilities that have released the most pollution over the past four years.

A spokesperson with the Texas Commission on Environmental Quality said the agency does not comment on others' studies or assertions. According to information on TCEQ's website, from 2000 to 2011, ozone levels in Texas decreased by 23 percent.

The information may be found at <http://www.tceq.texas.gov/airquality/airsuccess/air-success-criteria>

The environmental groups say the USEPA has made clear that these so-called "emission events" are not exempt from the Clean Air Act, which means that federal and state agencies can order these plants to install or improve emission controls to fix the problem, according to a press release from Hastingsgroup.com. Violators are also liable for penalties, unless they can prove the upsets are infrequent, completely unavoidable, and could not have been prevented through better design or operation of pollution control equipment.

"Each year the refineries and chemical plants dump tons of unregulated emission into the air that my community breathes. Too many people are being subjected to toxic fumes and are becoming ill; one out of every five households in my hometown has someone who suffers from respiratory problem or other illnesses related to chemical exposure. We need to stop these toxic releases now," Hilton Kelley of Port Arthur, who is director of CIDA, said.

The letter to the Inspector General was sent by Environmental Integrity Project, Air Alliance Houston, Community In-Power and Development Association, Earthjustice, the Lone Star Chapter of the Sierra Club, Public Citizen Texas, Sustainable Energy and Economic Development Coalition, Texas Campaign for the Environment, Texas Environmental Justice Advocacy Services, and Texas Interfaith Center for Public Policy.

The letter identifies 20 facilities with combined releases of 49,000 tons of sulfur dioxide and other hazardous pollutants. The five plants reporting the most emissions over the four year period due to upsets are:

- Keystone Gas Plant in Winkler County with 13,852 tons of air pollution from 239 incidents;
- ExxonMobil Beaumont in Jefferson County with 6,435 tons of air pollution from 70 incidents;
- Mallet CO2 Recovery Plant in Hockley County with 4,004 tons of air pollution from 110 incidents;
- Goldsmith Gas Plant in Ector County with 3,855 tons of air pollution from 240 incidents; and
- Valero Port Arthur Refinery in Jefferson County with 3,159 tons of air pollution from 100 incidents.

Environmental Integrity Project Director Eric Schaeffer said: "Enough is enough. These breakdowns release thousands of tons of sulfur dioxide and other pollutants that degrade air quality and can be harmful to communities nearby. We understand that even well run plants with state of the art pollution controls may occasionally have a malfunction. But these 20 plants combined reported more than two thousand incidents over the past four years. When breakdowns become the routine, facilities should be required to fix the problem by upgrading equipment and improving their operations."

Dr. Neil Carman, Lone Star Chapter of Sierra Club said: "These uncontrolled industrial emissions in Texas need to be dealt with by the EPA, since the state of Texas under the Texas Commission on Environmental Quality has been ineffective in preventing these toxic pollutants. The volumes of these emissions are extraordinarily high and many of the plants are sited in or adjacent to communities, exposing people to toxic air pollution."

PAnews.com, Port Arthur, Texas 3501 Turtle Creek Drive Port Arthur, TX 77642

EPA on Keystone XL: Significant Climate Impacts from Tar Sands Pipeline

By David Biello | Scientific American – 15 hrs ago

In a draft assessment of the proposed Keystone XL pipeline, consultants for the U.S. State Department judged that building it would have no significant [impact on greenhouse gas emissions](#). Why? Because the analysts assumed the tar sands oil would find a way out with or without the new pipeline.

The U.S. Environmental Protection Agency does not agree. [Keystone XL's ability](#) to carry an additional 830,000 barrels of tar sands oil per day is vital to expanded production of the tarry crude in Alberta. The EPA contends that the analysis by State got the economics all wrong. In particular the consultants were too optimistic about the ease with which the oil could be moved by railroad rather than pipeline--an alternative already in use. But such tar sands oil transportation alternatives can more than triple the cost of moving crude. State's report also neglected to consider the potential for congestion on the railroads with an uptick in oil transport, EPA contends. Of course, from a greenhouse gas perspective, transport by pipeline results in fewer emissions than transport by rail, truck or barge.

The bottom line, from a [climate perspective](#): "oil sands crude is significantly more [greenhouse gas] intensive than other crudes, and therefore has potentially large impacts," wrote EPA's Cynthia Giles about the State Department's attempts to assess the full implications of Keystone. "Lifecycle emissions from oil sands crude could be 81 percent greater than the average crude refined in the U.S.," a difference that can grow "depending on the assumptions made."

The EPA also cited its experience from cleaning up after the spill of tar sands oil from a pipeline near the Kalamazoo River in Michigan. This pipeline, smaller than Keystone XL, [managed to spill](#) some 20,000 barrels in 2010, much of which ended up at the bottom of the river. Despite three years of clean up effort, the river will have to be dredged because the oil sands crude "will not appreciably biodegrade," Giles wrote. In other words, the kind of [microbes that chewed up the oil](#) from BP's blown out Macondo well in the Gulf of Mexico could find no purchase on diluted bitumen from Alberta. Such heavy oil results in the tarballs ubiquitous along the Gulf Coast and, apparently, a layer of tar at the bottom of the Kalamazoo River. All of that experience suggests that would-be pipeline operator TransCanada should be required to prepare for such submerged oil in the event of a leak from Keystone XL as well as having equipment in place to deal with a spill before it happens, the EPA suggests.

That's a particular concern because, despite a re-routing around ecologically sensitive regions in Nebraska, the Keystone XL pipeline would still cross over the nation's largest freshwater aquifer: [the Ogallala](#).

All of that leads the agency to object to the State Department's analysis on the grounds of "insufficient information" and "significant" environmental objections. What impact, if any, that has on the approval or disapproval of the pipeline by the Obama administration remains to be seen but the [impact of Keystone XL on climate change](#) is clear.

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1. AIR POLLUTION:

Small sequester cuts in EPA grant program mean big headache for state regulators

Jean Chemnick, E&E reporter

Published: Wednesday, April 24, 2013

This story was updated at 1:47 p.m. EDT with EPA response.


At a glance, U.S. EPA's plan to cut an \$11.5 million grant program in an effort to meet the sequestration mandate doesn't look like much given the agency's \$8.5 billion budget.

But that's a lot of money to state and local air regulators who have been counting on it.

"In addition to all of the cuts the states have sustained the last couple of years because of horrific economic conditions at the local level, we are now facing a double whammy of having cuts in federal grants to states on top of those already cut state and local programs," said Bill Becker, executive director of the National Association of Clean Air Agencies, or NACAA.

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In this series, E&E looks at some of the challenges facing federal agencies as they begin to feel the full impact of mandatory budget cuts.

"This is not the first cut they're experiencing, and it likely won't be the last. And as these accumulate, it becomes more and more problematic."

In most years, EPA provides about \$230 million to help states and local governments meet Clean Air Act responsibilities. But sequestration is changing that equation, forcing agencies to absorb a 5 percent cut in annual grants over the final six months of fiscal 2013.

And cuts come on a base line that's already lower than the Clean Air Act envisioned, Becker said. Section 105 of that law authorized EPA to provide up to 60 percent of a state's cost of running air programs. While that section provides funds for specialized air monitoring that the states are not required to match, NACAA estimates that states usually cover 77 percent of their own budgets, with EPA chipping in 23 percent.

Those funds "are our bloodline," Becker said.

"Significant cuts to that program," he added, "could very well interfere with our ability to protect people's lives and health."

EPA hasn't committed to a strategy for cutting \$11.5 million from the grant program. The agency said it does not have an approved operating plan for fiscal 2013, so it cannot compare funding levels at this time.

But Becker said EPA plans to meet \$4 million of the total by delaying the next phase of a new monitoring program for nitrogen oxides at busy highways.

Pushing the program back a year may have consequences, Becker said, notably that people living in smoggy areas would still not have access to information about highway NOx emissions. The monitoring has been the subject of litigation in California.

EPA, Becker said, has also indicated it plans to distribute the remaining \$7.5 million in grant-program cuts among state agencies and allow them to figure out how to make those reductions.

"I don't think in any state the impacts will be benign," he said. But some states, he said, would see monitoring, enforcement and other operations hampered more by the drawdown in federal funds than others would.

Bruce Andersen, who heads the Department of Air Quality for the Unified Government of Wyandotte County in northeast Kansas, said his agency would probably have to lose staff as a result of the cuts to grants. He has six staffers, down from 10 in recent years because of local budget woes. The agency processes Clean Air Act permits, oversees monitoring and does pollution enforcement in the busy Kansas City industrial sector.

"It's an environment where the money just hasn't been increasing. It's been stable at best and sometimes decreasing a little bit," he said in a telephone interview. "And our work responsibilities don't decrease commensurately. They tend to keep increasing over time."

As the economy picks up and the spring building season starts, Andersen's small office expects to see a steady rise in applications from businesses that need new or revised air permits. His agency's two permit engineers -- half as many as the office had a few years ago -- are already taking about a third more time than they did two years ago to grapple with their current workload. More work will mean longer waits.

"They have to wait in line if your staff is down," he said.

'Fewer cops on the beat'

In some cases, tight funding has required local agencies like his own to close, transferring responsibility for enforcement, permitting and other activities to state agencies.

And if states lack the resources to carry out those responsibilities, they revert back to EPA.

Bottom line: There are fewer regulators with boots-on-the-ground experience with local businesses.

"Suddenly, EPA then has to scramble with existing resources and staff to become the major permit writer, the major facilities inspector," said Peter Iwanowicz, who works on national policy and advocacy at the American Lung Association.

Businesses don't want to see that happen, Andersen said.

"They would much rather work with local [air agencies] and even the states than they would with, say, the federal EPA if they were to take over the permitting program," he said.

Air agencies collect a small amount of funding by charging large emission sources fees to process permit applications, but Becker said those fees account for only about 10 percent of an agency's operating expenses.

A few states supplement permit fees with additional levies, but Andersen said these policies wouldn't gain traction in business-friendly Kansas.

A few industry groups say they are looking at how EPA budget constraints might affect their members' ability to get permits.

"Yes, we are concerned that budget issues could cause permitting delays and/or increase uncertainty around our construction or expansion projects, and could take some of the steam out of the manufacturing renaissance being driven by new shale gas supplies," American Chemistry Council spokeswoman Jennifer Scott said in an email.

Shale production is a relatively new industry, and new projects will all require permits for construction and operation.

"To ensure they go forward, businesses need certainty, including timely permitting by the [EPA] and state agencies," she said. "Unfortunately, sequestration, staff furloughs, and budget cuts could adversely affect the permitting timeline."

Cuts to state air grants will also be detrimental, she said. "Cutting these funds could result in shortages of permitting staff and/or higher permit fees, both of which hurt the very businesses that are trying to generate economic growth," she wrote.

Paul Billings, the American Lung Association's senior vice president, said permitting delays grow over time.

"You have to have enough human resources within a state air agency to process those permit applications, and so if you have fewer people, it's going to take longer, and it sort of cascades," he said. "If the turnaround time is a week and then it stretches to two weeks, then it gets longer as we go."

But the bottom line for Iwanowicz is that less resources for state and local regulators will lead to more emissions.

"Our concern," he said, "is that fewer resources mean fewer cops on the beat."

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Administration

By The Associated Press Las Cruces Sun-News

Posted:

CurrentArgus.com

SANTA FE - A natural gas processing company will have to pay a civil penalty of more than \$838,000 as part of a settlement with the New Mexico Environment Department.

The department announced Tuesday that it has entered into a settlement agreement with Enterprise Products Operating LLC over numerous alleged emissions violations at 31 different sites operated by the company and its subsidiaries.

The alleged violations occurred between 2008 and 2010.

Acting Environment Secretary Ryan Flynn says the company has agreed to install new pollution control equipment that will result in fewer emissions of methane and volatile organic compounds.

Some of the penalty assessed by the Environment Department will go toward paying for the new equipment.

Many Americans Breathing Cleaner Air: Report

But some cities continue to have dangerously high levels of ozone and soot

April 24, 2013



By Carina Storrs

HealthDay Reporter

WEDNESDAY, April 24 (HealthDay News) -- Although many Americans are now breathing cleaner air, others are living in cities that are more polluted than they were a decade ago, a new report shows.

"The long-term trend is positive and headed to much cleaner air," said report author Janice Nolen, assistant vice president of national policy and advocacy for the American Lung Association. "[However], there is an uptick in some areas that are a concern and some areas where the problem remains very, very serious."

The report, conducted by the American Lung Association, measured the levels of ozone and small particles in the air, known as soot, in almost 1,000 cities and counties in the United States between 2009 and 2011. About half of the 25 most polluted cities had improved since last year's report, and many of those cities were the cleanest they had been since the association began the research in 2000.

Unfortunately, the other half of the 25 most polluted cities was worse off. Even among the cities that improved, many were still near the top of the most-polluted list, including Los Angeles, which had the most ozone pollution, and Bakersfield, Calif., which had the highest level of particle pollution.

In total, there were 254 counties with unhealthy levels of ozone or particle pollution, and about 132 million people (42 percent of the U.S. population) live in these areas. The previous report had found that 127 million people (41 percent of the U.S. population) resided in areas with poor air quality.

In addition to the California cities, Houston, Dallas, Oklahoma City, Cincinnati, New York City and Washington, D.C., were among the metropolitan areas that had high levels of ozone. As for year-round levels of soot, many of the same cities in California topped the list, as well as Cincinnati and Canton in Ohio; Philadelphia and Allentown in Pennsylvania; Louisville, Ky.; St. Louis; and Fairbanks, Alaska.

One expert was not surprised by the findings.

"Being from California, I knew we had a few pretty bad areas, but this report really drives it home," said Irva Hertz-Picciotto, a professor of environmental and occupational health at the University of California, Davis.

The cleanest cities, which did not have a single day of unhealthy levels of ozone or particle pollution from 2009 to 2011, were Bismarck, N.D.; Rapid City, S.D.; and the Fort Meyers and Palm Beach areas of Florida.

A lot of it has to do with geography, Nolen said. Ozone, also known as smog, forms when gases from car exhaust, coal-fired power plants and other sources react with sunlight. In valley areas, like around Los Angeles, these gases get trapped, whereas they are dispersed quickly in elevated areas, she said.

The current report also listed more cities with unhealthy ozone levels than the last report, which is probably explained by hotter and sunnier weather, especially in the middle regions of the United States, Nolen said.

In addition to geography and climate, "a lot of transportation-related sources -- cars and trucks and shipping ports -- contribute to [the ozone] problem in the California area, and a lot of the most polluted cities in the eastern part of the country have coal-fired power plants," Nolen said.

To reduce the level of smog-causing vehicle emissions, the Environmental Protection Agency (EPA) proposed rules in March that would require less sulfur in gasoline and stricter vehicle emissions standards. Similar requirements went into effect in California in 2012.

Although health and environmental groups and the automobile industry support the proposal, oil companies oppose it, Nolen said. "We are encouraging people to support the EPA rule," she added.

Nolen recommended that people keep track of the air quality in their area through the AIRNow.gov website.

"If it is a high-alert day, drive less and don't burn wood or trash," she said.

Unfortunately, only about a third of counties in the United States have air-quality monitors, because they are expensive to install and collect, Nolen said. For the first time, however, this year's report has information on every county, using data from nearby cities and counties for areas that don't have their own monitors.

Both ozone and particle pollution can affect respiratory health, worsening breathing and increasing the risk of asthma attacks, respiratory infections and chronic obstructive pulmonary disease (COPD).

"People thought problems were limited to the lungs, but over the past 15 years quite a bit of work has shown things like cardiovascular effects," Hertz-Picciotto said. Studies have found links between high levels of ozone and soot and increased risk of heart attacks and stroke, as well as lower birth weights and increased risk of infant mortality.

Air quality can have the biggest effect on vulnerable groups of people, including young children, older adults and people with weak immune systems, Hertz-Picciotto said.

More information

You can find information about AIRNow and your local air quality and air pollution in general at the [National Association of Clean Air Agencies](#).

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Texas Southern University, EPA form partnership

by [Journatic News Service](#) | April 21, 2013 7:21 pm



Texas Southern University and Environmental Protection Agency staff sign the partnership

Texas Southern University has signed a partnership Memorandum of Understanding with the Environmental Protection Agency.

"Texas Southern University has entered into a significant agreement with the Environmental Protection Agency Region 6 that will help train qualified professionals in environmental policy, economics and several areas of science, business and technology. The Memorandum of Understanding will focus on bringing innovative strategies to the forefront to assure an adequate supply of highly trained and skilled personnel for the accomplishment of environmental research, policy and program development," according to a press release from Texas Southern University.

Robert Bullard, dean of the Barbara Jordan/Mickey Leland School of Public Affairs, will lead the initiative for Texas Southern. Bullard and TSU Provost and

Memorandum of
Understanding on April
10.

Vice President of Academic Affairs Sunny Ohia signed the agreement Wednesday,
April 10, on campus.

Texas Southern University is at 3100 Cleburne St., Houston.

For more information, visit www.tsu.edu.

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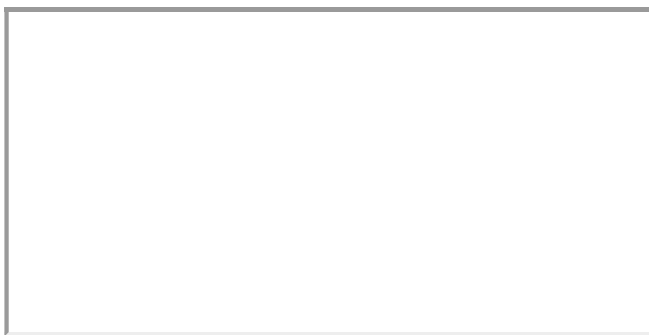
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The vegetated "green" roof at the Hipolito F. Garcia Federal Building promotes biodiversity, restores habitat for wildlife and reduces heat. Other sustainable features at the building include gray water collection, an electric refueling station and insulation improvements.

Photo: JOHN DAVENPORT, San Antonio Express-News

Yesterday, the Environmental Protection Agency announced the winners of its third-annual "battle of the buildings" Energy Star National Building Competition. 3,000 institutions from around the country competed to see which could reduce its energy use the most in a year, and several Texans came out on top.

The winner of the competition was an elementary school from New Jersey, cutting its cost by 52 percent. Following close behind in second place was the AAFES Fort Hood Warrior Way Express Store, which cut its energy

cost by 48.5 percent, saving over \$17,000 in energy costs.

The exchange service convenience store serves military families stationed at Fort Hood. The store said they reduced their energy by taking a "nuts and bolts" approach. The team started by getting all equipment in working order. Then, they implemented energy reducing equipment such as LED lights sensor lighting controls.

The San Antonio Federal Building was also listed as a top finisher, reducing energy expended by 34.4 percent, saving over \$186,000 in energy costs. The building was renovated in 2012 to incorporate energy saving and green technologies. Dallas based HEI Hotels and Resorts was the top finisher for the hotel category, cutting energy use by 21 percent.

In total, the competitors cut energy costs by \$50 million, saved over three billion kButs of energy, and reduced enough green house gas emissions to equal electricity used by over 43,000 homes.

"The impressive results of the National Building Competition help show that any building can take simple steps to improve the energy efficiency of the buildings where we all work, play, and learn," said EPA Acting Administrator Bob Perciasepe, "All of the participants in the Energy Star National Building Competition are finding more and more ways to cut energy use, saving thousands of dollars and reducing greenhouse gas emissions."

Categories: [Energy](#), [Environment](#), [Fort Hood](#), [FuelFix](#), [White House](#)

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Daily News

States Detail Competing Priorities For Next EPA Emissions Transport Plan

Posted: April 24, 2013

States are outlining competing priorities at meetings with EPA on policies for curbing interstate transport of air pollution, with eastern states seeking strict controls on industrial plants in upwind states while officials in other states are pushing options that could reduce their burdens under a future agency air transport plan.

States have met with EPA at closed-doors meetings in recent weeks, including an April 8 event in Research Triangle Park (RTP), NC, largely attended by eastern state officials and a second EPA-hosted meeting in Denver, CO, primarily to hear input from western states. EPA is holding the events to discuss fallout from the appellate ruling that scrapped the agency's Cross-State Air Pollution Rule (CSAPR) utility air trading program to cut interstate pollution.

The meetings are revealing splits between East Coast and Midwestern states that were covered by CSAPR, with Midwestern states clashing with their coastal counterparts on how to determine their proportional contribution to downwind air pollution, cost-effectiveness of pollution controls and other issues. Western states are raising separate concerns about the unique air quality problems that they face based on their geography and other factors.

The deadline for seeking Supreme Court appeal of the CSAPR ruling is April 24, and environmentalists, EPA and several eastern states and cities [have asked the high court to take up the case](#), defending the cap-and-trade program.

Even with the appeal request pending, EPA is holding the meetings to discuss the "next steps to address the transport of air pollution across state boundaries," according to its website. An EPA spokeswoman has said the state outreach meetings are on fulfilling Clean Air Act duties and "are not about replacing CSAPR."

Although EPA is hopeful the Supreme Court will reverse the U.S. Court of Appeals for the District of Columbia Circuit's ruling in *EME Homer City Generation, L.P. v. EPA*, the stakeholder meetings have to date focused on how the agency would go about crafting a future rule for reducing interstate air pollution transport, sources say.

CSAPR would have created an emissions trading program to curb nitrogen oxides (NOx) and sulfur dioxide (SO2) from power plants in 28 states in the eastern half of the United States. The rule was designed to help states attain EPA's ozone and fine particulate matter (PM2.5) national ambient air quality standards (NAAQS) by reducing NOx emissions that lead to ozone formation and SO2 emissions that contribute to PM2.5 formation.

But the D.C. Circuit said EPA exceeded its Clean Air Act authority with the rule and how the agency implemented it, saying states should first have had time to develop their own plans to curb interstate air pollution. The decision temporarily revives the Bush-era Clean Air Interstate Rule -- a trading program that the D.C. Circuit remanded to EPA due to flaws in the rule, and which eastern states have said is too weak to help them attain NAAQS.

Emissions Reductions

The ruling has left eastern states [scrambling to find options](#) to curb emissions to help reduce emissions and meet the NAAQS. But the states say much of their problem in attaining the standards comes from air pollution associated in sources located in upwind states they cannot regulate. Therefore they want EPA to craft a national approach to reducing emissions, but the stakeholder meetings are highlighting a split with western states.

The RTP meeting primarily highlighted the split between East Coast and Midwestern states, [according to a presentation](#) that Virginia's top air official Michael Dowd gave at an April 11 American Law Institute - Continuing Legal Education air policy event in

Washington, D.C. Under "general disagreement" he listed proportionality -- the impact of nearby versus distant sources; inventories -- whether to use a 2008 or 2011 emissions baseline for air quality planning; and cost-effectiveness.

East Coast states including Virginia are calling for EPA to use emissions inventories from 2011 to determine the "significant" contribution of each state to every other state's problems meeting NAAQS. Other states further upwind are pushing for an earlier year, such as 2007, to win credit for measures they have already taken to reduce ozone downwind. Under CSAPR, EPA defined a significant contribution as one percent or more of the NAAQS.

There is also disagreement over the technical approach needed to attribute proportional significant contribution, with East Coast states seeking to give relatively more weight to distant sources than nearby ones.

In addition, some eastern states such as New Jersey and Delaware use a threshold for pollution control measures considered cost-effective that is relatively high in terms of tons of pollution removed. The acceptable cost per ton to remove pollution is lower in many upwind states due to their relatively smaller problems meeting NAAQS.

One eastern regulator says Dowd's characterization of disagreement on the issue is broadly correct, adding that, for upwind states, costs per ton considered acceptable on the coast are a "shock to the system." The source says timing is another area of dispute, with Northeastern and Mid-Atlantic states seeking a quick policy solution to their problems, while upwind states are looking for a longer timeline for any rule.

Western States' Priorities

Western states meanwhile used their April 17 meeting in Denver with EPA officials to outline their concerns and goals for a future transport rule. One western source says that although CSAPR applied to eastern states, if EPA as expected tightens its existing ozone NAAQS from 75 parts per billion (ppb) to 70 ppb or less, it would place many areas western areas into nonattainment for the first time, imposing new pollution control mandates on them.

The western source says EPA at the meeting presented two scenarios, "complete flexibility" and "no flexibility," to represent the extremes that EPA could come up with for states to curb transport. At one extreme, EPA might even specify emissions reductions for individual emissions sources. The source says that the D.C. Circuit's ruling, requiring that EPA define significant contribution, applies in the whole country. Given major data gaps in western states, many in the region feel that it would be easier for EPA to adopt a very prescriptive approach.

Western states face several unique challenges. For example, ozone and PM levels are affected by wildfires and dust storms, which cross state lines and can qualify for exemptions from regulatory compliance under EPA's "exceptional events" rule. They are also more concerned than eastern states with air pollution transported from other countries, such as particulate from Mexico or ozone blown in from Asia, and are affected by stratospheric ozone intrusion at high altitudes and atmospheric inversions trapping wintertime emissions in mountainous areas.

Also, the contribution to ozone formation from oil and gas drilling, a major emissions source, is poorly quantified, the source says. The source says states raised all these issues in Denver at the meeting with EPA officials, and gave the agency an "earful" cautioning against EPA crafting a national rule based on regulating eastern power plants that would be a poor fit for western states, given the small role of power plants in western ozone formation.

EPA officials suggested as the meeting that exceptional events exemptions should be handled through the state air quality planning process, the source says, but states countered that such events are routine contributors to transport and should be addressed in any new rule. The source says EPA's approach to this "is a fine answer if EPA actually acts on thousands of exceptional events requests" -- but it is doubtful the agency will take this approach.

Western states are very large, so geography plays a major role, the source says, and having states cut contribution to pollution in other states by the most cost-effective method statewide might not work -- cutting emissions in Northern California will not solve air problems in Arizona caused by emissions from Southern California, for example.

The source also cautions that an over-emphasis on cost-effectiveness could mean that downwind states are "left holding the bag" for emissions they cannot control, defeating the objective of a successor rule to CSAPR.

Ruling's Limitations

Whatever solution EPA comes up with will be tightly constrained by the D.C. Circuit's ruling against CSAPR, which found that the rule allowed for the possibility of "over-control," or emissions cuts upwind greater than those needed for downwind states to attain the NAAQS. The court also found that it is EPA's job to precisely define the significant contribution of pollution from one state to another,

and that the agency should first do this, then allow states to draft state implementation plans (SIPs) to put measures in place. EPA under CSAPR directly imposed federal implementation plans (FIPs) on states to cut emissions, allowing for states to replace these with SIPs later.

These constraints present certain challenges, according to the eastern regulator. For example, they affect how to allow for economic growth and establishment of new industry, the source says. "If everyone controls [just enough to meet] the NAAQS, how do you handle growth? If you want to address growth, where do you get it?"

[A March 28 report](#) from consulting firm Alpine Geophysics LLC aims to develop a methodology for calculating significant contribution from each state. The report appears on the website of the Midwest Ozone Group (MOG), an industry-funded body that describes itself as trying to ensure a "legally and technically sound national ambient air quality program" that relies on "sound science." The report uses Ozone Source Apportionment Technology modeling to develop example calculations of proportional significant contribution from upwind states.

In a position statement on the report, MOG says the Alpine report is based on a series of "red lines" established by the *EME Homer City* ruling, including "proportionality of upwind states," where the "ratio of an individual state contribution to the total contribution of all upwind States should be used as scalar to determine how the total upwind contribution is allocated among upwind States." EPA may reduce upwind states' obligations to avoid unreasonable costs.

MOG says its report does not capture the full extent of the problem EPA faces. For example, it does not address "the situation in which an upwind state may contribute to one downwind non-attainment area to a much greater extent than it does to another," among other limitations. The report asks, "Don't we need to solve downwind local responsibility first, and if so, which area do we start with? Do we solve downwind to upwind? Low exceedance to high?"

A source with the organization says that in general, MOG's view is that according to the *Homer City* ruling, there are "a very narrow set of circumstances under which an upwind state can be forced to introduce emissions controls." Also, the issue goes well beyond power plants and in many cases car emissions may be responsible for much of an upwind area's significant contribution, the MOG source says -- a point on which all sources agree.

The eastern regulator says that Alpine's methodology might be biased, however, by its selection of 2008 as a base year for emissions, when newer, more accurate figures are available that might show higher contribution to ozone problems by upwind states. Also, the regulator says Alpine seems to focus on ozone monitoring sites where a relatively small contribution to ozone nonattainment comes from out of state. Focusing instead on a monitoring site where the overwhelming share of ozone comes from out of state would change the required methodology. -- *Stuart Parker* (sparker@iwpnews.com)

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Daily News

EPA Inspector General Launching Investigation Into Stalled NPL Listings

Posted: April 23, 2013

EPA's Office of Inspector General (IG) is initiating a study to uncover why EPA has a backlog of sites that have been proposed to be added to Superfund's National Priorities List (NPL), the list of the worst contaminated sites in the country, but have never moved forward.

The IG's Office of Program Evaluation notified the agency's enforcement and waste chiefs [in an April 4 memo](#) of the plan to begin "preliminary research" to evaluate proposed NPL sites, noting the effort is part of the IG's fiscal year 2013 annual plan.

The IG's "preliminary research objective is to determine why some Superfund sites that have been proposed for NPL listing have remained in the proposed status for many years without being finalized on the NPL or removed from the proposed NPL list," the notification says.

EPA could benefit from this evaluation by taking up opportunities to reallocate resources to ensure environmental and human health protection at the highest priority Superfund sites, it says. The effort will include working within the Office of Solid Waste & Emergency Response, Office of Enforcement & Compliance Assurance and EPA regions where necessary, it says.

In related news, the IG March 28 [released a report](#) on the Superfund remedial program, indicating EPA is generally agreeing in principle to increase the use of fixed-price contracts. But the IG and the agency are attempting to resolve differences over how soon EPA should re-evaluate existing cost-reimbursable contracts as the appropriate form of contract for Superfund work and over what type of infrastructure the agency will develop to support a move toward more fixed-price contracting.

The IG report, titled "EPA Should Increase Fixed-Price Contracting for Remedial Actions," is critical of the agency for continuing to rely on "high risk cost-reimbursement contracts and time-and-materials [T&M] task orders in the Superfund remedial program," rather than reducing the use of these as the president, Congress and Government Accountability Office have all recommended.

A 2009 memo from President Obama said that cost-reimbursement contracts are at risk of being wasteful, inefficient and of failing to serve the needs of the federal government, according to the report. A subsequent White House Office of Management & Budget memo called on agencies to reduce the number of high risk contracts and stated that cost-reimbursement and T&M contracts "pose a risk because they provide no direct incentive to the contractor for cost control," the report says.

"Resistance to change, regional program office pressure, lack of leadership, and lack of trained qualified staff have contributed to the overreliance on high risk contracts," the IG report says. "Reducing reliance on these contracts can result in numerous benefits, including cost savings, increased competition, and achievement of socioeconomic goals."

The IG report recommends that EPA require high-level approval when it grants cost reimbursement remedial action contracts, which are full-service contracts that provide all services for a Superfund cleanup; that the agency create performance measures and goals for regions for the use of fixed-price contracts and task orders; and that EPA train staff on how and when to use less risky contracts. The IG also recommends that EPA examine whether staffing changes are needed in regions to ensure staff members have the skills to manage an increased use of fixed-price contracts.

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